

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re:

Daniel R. Miville

Chapter 13
Case No. 08-42572
Honorable Melvin S. Hoffman

Debtor
_____/

AFFIDAVIT OF DEBTOR'S NON-COMPLIANCE

COMMONWEALTH OF MASSACHUSETTS

Paul J. Mulligan, Esq., being duly sworn, deposes and says:

1. I am the attorney and agent for US Bank, NA, a creditor of debtor Daniel R. Miville ("Debtor"), regarding the real property known and numbered as 103 Lakewood Street, Worcester, Massachusetts (the "Property").
2. On August 6, 2009, US Bank, NA filed a Motion for Relief from Stay with respect to the Property.
3. On September 30, 2009, US Bank, NA and the Debtor filed an Amended Stipulation to resolve the Motion for Relief from Stay. The Amended Stipulation noted that the loan was post-petition due for the May 1, 2009 through September 1, 2009 payments plus fees and costs less a credit suspense balance for a total amount of post-petition arrearage of \$9,881.32. The Debtor agreed to cure the total amount of post-petition arrearage with four monthly payments in the amount of \$1,097.93 each due on the 15th of the months of October 2009 through January 2010 and five monthly payments in the amount of \$1,097.92 each due on the 15th of the months of February through June 2010 and to make regular monthly mortgage payments beginning with the October 1, 2009 post-petition monthly payment forward.
4. The Amended Stipulation provided that if the Debtor failed to make any of the payments under the Amended Stipulation, US Bank, NA or its attorney would give written notice to the Debtor's counsel of the failure to make timely payments and advise Debtor's counsel that failure to make said payments within seven (7) days after the date of such notice shall constitute a default under the Amended Stipulation.
5. The Amended Stipulation further provided that if the Debtor failed to cure the default prior to expiration of the seven (7) days after the notice of the default,

US Bank, NA or its attorney may file an Affidavit of Debtor's Non-Compliance with the United States Bankruptcy Court for the District of Massachusetts and the Court may enter an Order granting US Bank, NA and its successors and assigns relief from the automatic stay. The Order will allow US Bank, NA and its successors and assigns to exercise its rights pursuant to the Note and Mortgage in accordance with applicable state and federal law and to conduct a foreclosure sale of the Property.

6. On October 21, 2009, the Court approved the Amended Stipulation (Docket No. 60).
7. According to the records of US BANK HOME MORTGAGE, servicing agent for US Bank, NA, the Debtor has failed to make the payments required by the Amended Stipulation. The stipulation payment of \$1,097.93 due on March 15, 2010 and all subsequent payments remain outstanding and the loan is otherwise due for the April 1, 2010 post-petition regular monthly payment.
8. On July 13, 2010, US Bank, NA served its Notice of Default on Stipulation on Debtor's counsel via Facsimile: 508-752-6168 and to Debtors and Debtor's Counsel via First Class Mail, postage pre-paid as follows:

Daniel R. Miville
103 Lakewood Street
Worcester, MA 01603

James P. Ehrhard
11 Pleasant Street
Worcester, MA 01609

9. Pursuant to the terms of the Amended Stipulation, the Debtor had until July 20, 2010 to cure the default.
10. The Debtor failed to fully cure the default by July 20, 2010.
11. Therefore, US Bank, NA requests entry of an Order Granting Relief from the Automatic Stay pursuant to the terms of the Amended Stipulation.

Dated: August 24, 2010

/s/ Paul J. Mulligan
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